

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 123                      Public Records Exemption/Email/Cell Phones/Pagers/Billing Records  
**SPONSOR(S):** Dean  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** SB 1666

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Administration		Williamson	Everhart
2) Criminal Justice (Sub)			
3) Public Safety & Crime Prevention			
4) Appropriations			
5)			

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### SUMMARY ANALYSIS

Current law provides a public records exemption for the home addresses, telephone numbers, social security numbers, and photographs of certain law enforcement personnel, Department of Children and Family Services personnel, Department of Health personnel, and Department of Revenue (DOR) or local government personnel.

This bill expands that exemption to also include electronic mail addresses, cellular telephone numbers, electronic pager numbers, and user-specific electronic identification numbers or access codes of such officers and personnel, and the billing records associated with those addresses, numbers, and codes. This bill provides for future review and repeal and provides a statement of public necessity.

This bill does not appear to have a fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0123.sa.doc  
**DATE:** April 1, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain: Not applicable.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Current law provides a public records exemption for the home addresses, telephone numbers, social security numbers, and photographs of the following:

- Active or former law enforcement personnel, including correctional and correctional probation officers;
- Personnel of the Department of Children and Family Services (DCFS) whose duties include investigation abuse, neglect, exploitation, fraud, theft, or other criminal activities;
- Personnel of the Department of Health (DOH) whose duties are to support the investigation of child abuse or neglect; and
- Personnel of the Department of Revenue (DOR) or local governments whose responsibilities include revenue collection and enforcement or child support enforcement.<sup>1</sup>

An agency that is the custodian of such information is only required to maintain the confidential and exempt status of the information if the officer, employee, or employing agency submits a written request to the custodial agency.

##### Effect of Bill

This bill expands the current exemption to also include electronic mail addresses, cellular telephone numbers, electronic pager numbers, and user-specific electronic identification numbers or access codes of such officers and personnel, and the billing records associated with those addresses, numbers, and codes.

This bill provides for future review and repeal and provides a statement of public necessity. The public necessity statement, however, fails to provide justification for making such information regarding personnel of DCFS, DOH, DOR, and local governments exempt<sup>2</sup> from public disclosure.

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<sup>1</sup> Section 119.07(3)(i), F.S.

<sup>2</sup> There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

C. SECTION DIRECTORY:

Section 1. Amends s. 119.07(3), F.S., creating a public records exemption for e-mail addresses, cellular telephone numbers, pager numbers, and user-specific electronic identification numbers or access codes for any electronic communications device, and the billing records of such addresses, numbers, and devices. Provides for future review and repeal.

Section 2. Provides a statement of public necessity.

Section 3. Provides an effective date of upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.

2. Other:

Article I, s. 24(c) of the Florida Constitution, requires that the Legislature state the public necessity for creating a public records exemption and requires that the exemption be no broader than necessary to effectuate the underlying basis for that exemption.

The public necessity statement contained in this bill is deficient in that it only provides a justification for making such information exempt for law enforcement personnel. The exemption, on the other hand, also applies to other agency personnel. Because the justification for exempting such information of other agency personnel is not provided, this bill could raise Constitutional concerns and if challenged in court, could be found unconstitutional.

B. RULE-MAKING AUTHORITY: None.

## C. DRAFTING ISSUES OR OTHER COMMENTS:

### **Public Records Law**

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995<sup>3</sup> provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

### **Other Comments**

A similar exemption was offered during 2002 Special Session C pertaining to security issues and a similar proposed committee bill was drafted and offered during the 2002 Regular Session by the Security Committee. After much discussion, neither bill was brought up for a vote.

The First Amendment Foundation argued that such information should not be made exempt from public disclosure because such personnel often place email addresses, cellular telephone numbers, and pager numbers on their business cards. They then distribute their business cards to members of the public, thereby defeating the purpose of the exemption. The First Amendment Foundation also argued that by exempting the billing records of such addresses and numbers, the public no longer has the capability to verify that government email, cellular telephones, and pagers are being used for appropriate purposes. The First Amendment Foundation has, however, suggested narrowing the exemption to only include "user-specific electronic identification numbers or access codes" for electronic communications devices.

An example of potential abuse was reported by the Tampa Tribune on February 15, 2003. In Tampa, a Sheriff's deputy accumulated more than \$6,000 in extra cellular telephone charges over the past two years. Many of the charges were for calls made to his girlfriend. Opponents to this bill argued that this abuse of a government cellular telephone would not have been discovered if this bill was current law.

The Orange County Sheriff's Office (sheriff's office) is a proponent of this bill and has stated that the exemptions are necessary in order to protect the safety of the law enforcement officer. The sheriff's office has also stated that public access to a law enforcement officer's cellular telephone number or pager number could hinder an officer's job performance if the officer is continually telephoned or paged by victims, witnesses, or the press. Regarding the restriction of public access to billing records, the sheriff's office has stated that oversight can still be maintained due to the fact the sheriff's office conducts its own internal audits of the billing records of the cellular telephones and electronic pagers assigned to its officers.

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<sup>3</sup> Section 119.15, F.S.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.